

AMENDED IN ASSEMBLY FEBRUARY 29, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1553

Introduced by Assembly Member Irwin
(Coauthors: Assembly Members Burke, Chiu, Low, and Williams)

January 4, 2016

~~An act to amend Section 1785.11.2 of the Civil Code, relating to consumer credit reports. An act to amend Sections 4875 and 4877 of the Welfare and Institutions Code, relating to taxation.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1553, as amended, Irwin. ~~Consumer credit reports: security freezes: protected person. Savings plans: qualified ABLE program.~~

Existing federal law, the Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014 (ABLE Act), encourages and assists individuals and families to save private funds for the purpose of supporting persons with disabilities to maintain their health, independence, and quality of life by excluding from gross income distributions used for qualified disability expenses by a beneficiary of a qualified ABLE program established and maintained by a state, as specified.

Existing law conforms to these federal income tax law provisions relating to the ABLE Act under the Personal Income Tax Law and the Corporation Tax Law, as provided. Existing law establishes in state government the ABLE program trust for purposes of implementing the federal ABLE Act. Existing law also establishes the ABLE Act Board and authorizes the board to adopt regulations to implement the program.

This bill would authorize the ABLE Act Board to enter into a multistate contract with an account servicer in order to implement these

provisions and to enter into a long-term contract with an account servicer, as provided.

~~Existing state law defines and regulates consumer credit reports and authorizes a consumer to place a security freeze on his or her credit report by making a request in writing by mail to a consumer credit reporting agency. Existing state law requires a consumer credit reporting agency to place the security freeze on the consumer's credit report no later than 3 business days after receiving the consumer's request.~~

~~This bill would additionally authorize a representative of a protected person, defined as an individual who is under 16 years of age at the time a request for the placement of a security freeze is made or an incapacitated person or a protected individual for whom a guardian or conservator has been appointed, to place a security freeze on the credit report of the protected person by making a request in writing by mail to a consumer credit reporting agency. However, irrespective of whether the security freeze was requested by a representative, the bill would authorize an individual who is under 16 years of age or an individual over 16 years of age for whom a security freeze was requested by a representative to act on behalf of himself or herself with respect to temporarily lifting the freeze for a specific party or removing the freeze.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 *SECTION 1. Section 4875 of the Welfare and Institutions Code*
- 2 *is amended to read:*
- 3 4875. For purposes of this chapter:
- 4 (a) "ABLE account" or "account" means the account established
- 5 and owned by a designated beneficiary pursuant to this chapter
- 6 for the purpose of meeting the qualified disability expenses of the
- 7 designated beneficiary of the account.
- 8 (b) "Administrative fund" means the fund used to administer
- 9 this chapter.
- 10 (c) "Board" means the California ABLE Act Board established
- 11 under this chapter.
- 12 (d) "California ABLE Program Trust" or "ABLE program trust"
- 13 means the trust created pursuant to this chapter.
- 14 (e) "Designated beneficiary" means the eligible individual who
- 15 established an ABLE account and is the owner of the account.

(f) “Eligible individual” means an individual who is eligible under the program for a taxable year if during that taxable year both of the following criteria are met: year:

(1) ~~The~~ *the* individual is entitled to benefits based on blindness or disability under Title II or XVI of the federal Social Security Act, and that blindness or disability occurred before the date on which the individual attained 26 years of ~~age~~ *age*; or

(2) ~~A~~ *a* disability certification, as defined in the federal ABLE Act, with respect to the individual is filed pursuant to the requirements set forth in the federal ABLE Act.

(g) “Federal ABLE Act” means the federal Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014.

(h) “Investment management” means the functions performed by a manager contracted to perform functions delegated by the board.

(i) “Investment manager” means a manager contracted to perform functions delegated by the board.

(j) “Program fund” means the program fund established by this chapter, which shall be held as a separate fund within the California ABLE Program Trust.

(k) “Qualified ABLE Program” or “program” means the program established by this chapter to implement the federal ABLE Act pursuant to Section 529A of the Internal Revenue Code.

(l) “Qualified disability expenses” means any expenses related to the eligible individual’s blindness or disability that are made for the benefit of an eligible individual who is the designated beneficiary, including ~~expenses related to the following expenses:~~ education, housing, transportation, employment training and support, assistive technology and personal support services, health, prevention and wellness, financial management and administrative services, legal fees, expenses for oversight and monitoring, funeral and burial expenses, and other expenses, which are approved by the Secretary of the Treasury under regulations and consistent with the purposes of the federal ABLE Act.

SEC. 2. Section 4877 of the Welfare and Institutions Code is amended to read:

4877. (a) There is hereby created an instrumentality of the State of California to be known as the California ABLE Program Trust.

1 (b) The purposes, powers, and duties of the California ABLE
2 Program Trust are vested in, and shall be exercised by, the board.

3 (c) The board, in the capacity of trustee, shall have the power
4 and authority to do all of the following:

5 (1) Sue and be sued.

6 (2) Make and enter into contracts necessary for the
7 administration of the ABLE program trust, and engage personnel,
8 including consultants, actuaries, managers, counsel, and auditors,
9 as necessary for the purpose of rendering professional, managerial,
10 and technical assistance and advice.

11 (3) Adopt a corporate seal and change and amend it from time
12 to time.

13 (4) Cause moneys in the program fund to be held and invested
14 and reinvested.

15 (5) Accept any grants, gifts, appropriations, and other moneys
16 from any unit of federal, state, or local government or any other
17 person, firm, partnership, or corporation for deposit to the
18 administrative fund or the program fund.

19 (6) Enter into agreements with designated beneficiaries or
20 eligible individuals to establish and maintain an ABLE account.

21 (7) Make provisions for the payment of costs of administration
22 and operation of the ABLE program trust.

23 (8) Carry out the duties and obligations of the ABLE program
24 trust pursuant to this chapter and the federal ABLE Act pursuant
25 to Section 529A of the Internal Revenue Code and federal
26 regulations issued pursuant to that code, and have any other powers
27 as may be reasonably necessary for the effectuation of the purposes,
28 objectives, and provisions of this chapter.

29 (9) Carry out studies and projections in order to advise
30 designated beneficiaries or eligible individuals regarding present
31 and estimated future qualified disability expenses and the levels
32 of financial participation in the ABLE program trust required in
33 order to assist designated beneficiaries or eligible individuals.

34 (10) Participate in any other way in any federal, state, or local
35 governmental program for the benefit of the ABLE program trust.

36 (11) Promulgate, impose, and collect administrative fees and
37 charges in connection with transactions of the ABLE program
38 trust, and provide for reasonable service charges, including
39 penalties for cancellations.

40 (12) Set minimum and maximum investment levels.

1 (13) Administer the funds of the ABLE program trust.

2 (14) Procure insurance against any loss in connection with the
3 property, assets, or activities of the ABLE program trust.

4 (15) Procure insurance indemnifying any member of the board
5 from personal loss or liability resulting from a member's action
6 or inaction as a member of the board.

7 (d) (1) *The board may enter into a multistate contract with an*
8 *account servicer in order to implement this chapter.*

9 (2) *The board may enter into a long-term contract with an*
10 *account servicer that allows the account servicer to recoup costs*
11 *from administering ABLE accounts in the first years of*
12 *administration.*

13 (3) *Subdivision (a) of Section 10365.5 of the Public Contract*
14 *Code does not apply to this subdivision.*

15 (d)

16 (e) The Treasurer shall, on behalf of the board, appoint an
17 executive director, who shall not be a member of the board and
18 who shall serve at the pleasure of the board. The Treasurer shall
19 determine the duties of the executive director and other staff as
20 necessary and set his or her compensation. The board may authorize
21 the executive director to enter into contracts on behalf of the board
22 or conduct any business necessary for the efficient operation of
23 the board.

24 ~~SECTION 1. Section 1785.11.2 of the Civil Code is amended~~
25 ~~to read:~~

26 ~~1785.11.2. (a) (1) A consumer may elect to place a security~~
27 ~~freeze on his or her credit report by making a request in writing~~
28 ~~by mail to a consumer credit reporting agency. A representative~~
29 ~~of a protected person who is a consumer may elect to place a~~
30 ~~security freeze on the credit report of a protected person by making~~
31 ~~a request in writing by mail to a consumer credit reporting agency.~~
32 ~~“Security freeze” means a notice placed in a consumer’s credit~~
33 ~~report, at the request of the consumer or representative, and subject~~
34 ~~to certain exceptions, that prohibits the consumer credit reporting~~
35 ~~agency from releasing the consumer’s credit report or any~~
36 ~~information from it without the express authorization of the~~
37 ~~consumer. If a security freeze is in place, information from a~~
38 ~~consumer’s credit report may not be released to a third party~~
39 ~~without prior express authorization from the consumer or~~
40 ~~representative. This subdivision does not prevent a consumer credit~~

1 reporting agency from advising a third party that a security freeze
2 is in effect with respect to the consumer's credit report.

3 (2) For the purposes of this section, the following definitions
4 shall apply:

5 (A) "Protected person" means an individual who is under 16
6 years of age at the time a request for the placement of a security
7 freeze is made or an incapacitated person or a protected individual
8 for whom a guardian or conservator has been appointed.

9 (B) "Representative" means a person who provides to a
10 consumer credit reporting agency sufficient proof of authority to
11 act on behalf of a protected person.

12 (C) "Sufficient proof of authority" means documentation that
13 shows a representative has authority to act on behalf of a protected
14 person and includes an order issued by a court of law, a lawfully
15 executed and valid power of attorney, or a written, notarized
16 statement signed by a representative that expressly describes the
17 authority of the representative to act on behalf of a protected
18 person.

19 (b) A consumer credit reporting agency shall place a security
20 freeze on a consumer's credit report no later than three business
21 days after receiving a written request from the consumer or
22 representative.

23 (c) The consumer credit reporting agency shall send a written
24 confirmation of the security freeze to the consumer or
25 representative within 10 business days and shall provide the
26 consumer or representative with a unique personal identification
27 number or password to be used by the consumer or representative
28 when providing authorization for the release of his or her credit
29 for a specific party or period of time.

30 (d) If the consumer or representative wishes to allow his or her
31 credit report to be accessed for a specific party or period of time
32 while a freeze is in place, he or she shall contact the consumer
33 credit reporting agency, request that the freeze be temporarily
34 lifted, and provide the following:

35 (1) Proper identification, as defined in subdivision (c) of Section
36 1785.15.

37 (2) The unique personal identification number or password
38 provided by the credit reporting agency pursuant to subdivision
39 (c).

1 ~~(3) The proper information regarding the third party who is to~~
2 ~~receive the credit report or the time period for which the report~~
3 ~~shall be available to users of the credit report.~~

4 ~~(e) A consumer credit reporting agency that receives a request~~
5 ~~from a consumer or representative to temporarily lift a freeze on~~
6 ~~a credit report pursuant to subdivision (d) shall comply with the~~
7 ~~request no later than three business days after receiving the request.~~

8 ~~(f) A consumer credit reporting agency may develop procedures~~
9 ~~involving the use of telephone, fax, the Internet, or other electronic~~
10 ~~media to receive and process a request from a consumer or~~
11 ~~representative to temporarily lift a freeze on a credit report pursuant~~
12 ~~to subdivision (d) in an expedited manner.~~

13 ~~(g) A consumer credit reporting agency shall remove or~~
14 ~~temporarily lift a freeze placed on a consumer's credit report only~~
15 ~~in the following cases:~~

16 ~~(1) Upon consumer or representative request, pursuant to~~
17 ~~subdivision (d) or (j):~~

18 ~~(2) If the consumer's credit report was frozen due to a material~~
19 ~~misrepresentation of fact by the consumer or representative. If a~~
20 ~~consumer credit reporting agency intends to remove a freeze upon~~
21 ~~a consumer's credit report pursuant to this paragraph, the consumer~~
22 ~~credit reporting agency shall notify the consumer or representative~~
23 ~~in writing prior to removing the freeze on the consumer's credit~~
24 ~~report.~~

25 ~~(h) A third party who requests access to a consumer credit report~~
26 ~~in connection with an application for credit or any other use may~~
27 ~~treat the application as incomplete if a security freeze is in effect~~
28 ~~and the consumer or representative does not allow his or her credit~~
29 ~~report to be accessed for that specific party or period of time.~~

30 ~~(i) If a consumer or representative requests a security freeze,~~
31 ~~the consumer credit reporting agency shall disclose the process of~~
32 ~~placing and temporarily lifting a freeze and the process for allowing~~
33 ~~access to information from the consumer's credit report for a~~
34 ~~specific party or period of time while the freeze is in place.~~

35 ~~(j) A security freeze shall remain in place until the consumer~~
36 ~~or representative requests that the security freeze be removed. A~~
37 ~~consumer credit reporting agency shall remove a security freeze~~
38 ~~within three business days of receiving a request for removal from~~
39 ~~the consumer or representative if the consumer or representative~~
40 ~~provides both of the following:~~

1 ~~(1) Proper identification, as defined in subdivision (c) of Section~~
2 ~~1785.15.~~

3 ~~(2) The unique personal identification number or password~~
4 ~~provided by the credit reporting agency pursuant to subdivision~~
5 ~~(e).~~

6 ~~(k) A consumer credit reporting agency shall require proper~~
7 ~~identification, as defined in subdivision (c) of Section 1785.15, of~~
8 ~~the person making a request to place or remove a security freeze.~~

9 ~~(l) The provisions of this section do not apply to the use of a~~
10 ~~consumer credit report by any of the following:~~

11 ~~(1) (A) (i) A person or entity with which the consumer has or~~
12 ~~had, prior to any assignment, an account or contract, including a~~
13 ~~demand deposit account, or to which the consumer issued a~~
14 ~~negotiable instrument, for the purpose of reviewing the account~~
15 ~~or collecting the financial obligation owing for the account,~~
16 ~~contract, or negotiable instrument.~~

17 ~~(ii) A subsidiary, affiliate, or agent of a person or entity~~
18 ~~described in clause (i), an assignee of a financial obligation owing~~
19 ~~by the consumer to such a person or entity, or a prospective~~
20 ~~assignee of a financial obligation owing by the consumer to such~~
21 ~~a person or entity in conjunction with the proposed purchase of~~
22 ~~the financial obligation, for the purpose of reviewing the account~~
23 ~~or collecting the financial obligation owing for the account,~~
24 ~~contract, or negotiable instrument.~~

25 ~~(B) For purposes of this paragraph, “reviewing the account”~~
26 ~~includes activities related to account maintenance, monitoring,~~
27 ~~credit line increases, and account upgrades and enhancements.~~

28 ~~(2) A subsidiary, affiliate, agent, assignee, or prospective~~
29 ~~assignee of a person to whom access has been granted under~~
30 ~~subdivision (d) for purposes of facilitating the extension of credit~~
31 ~~or other permissible use.~~

32 ~~(3) Any state or local agency, law enforcement agency, trial~~
33 ~~court, or private collection agency acting pursuant to a court order,~~
34 ~~warrant, or subpoena.~~

35 ~~(4) A child support agency acting pursuant to Chapter 2~~
36 ~~(commencing with Section 17400) of Division 17 of the Family~~
37 ~~Code or Title IV-D of the Social Security Act (42 U.S.C. et seq.).~~

38 ~~(5) The State Department of Health Care Services or its agents~~
39 ~~or assigns acting to investigate Medi-Cal fraud.~~

1 ~~(6) The Franchise Tax Board or its agents or assigns acting to~~
2 ~~investigate or collect delinquent taxes or unpaid court orders or to~~
3 ~~fulfill any of its other statutory responsibilities.~~

4 ~~(7) The use of credit information for the purposes of~~
5 ~~prescreening as provided for by the federal Fair Credit Reporting~~
6 ~~Act.~~

7 ~~(8) Any person or entity administering a credit file monitoring~~
8 ~~subscription service to which the consumer has subscribed.~~

9 ~~(9) Any person or entity for the purpose of providing a consumer~~
10 ~~with a copy of his or her credit report upon the consumer's request.~~

11 ~~(m) (1) Except as provided in paragraph (2), this title does not~~
12 ~~prevent a consumer credit reporting agency from charging a fee~~
13 ~~of no more than ten dollars (\$10) to a consumer or representative~~
14 ~~for the placement of each freeze, the removal of the freeze, the~~
15 ~~temporary lift of the freeze for a period of time, or the temporary~~
16 ~~lift of the freeze for a specific party, regarding access to a consumer~~
17 ~~credit report, except that a consumer credit reporting agency may~~
18 ~~not charge a fee to a victim of identity theft who has submitted a~~
19 ~~valid police report or valid Department of Motor Vehicles~~
20 ~~investigative report that alleges a violation of Section 530.5 of the~~
21 ~~Penal Code.~~

22 ~~(2) With respect to a consumer who is 65 years of age or older~~
23 ~~and who has provided identification confirming his or her age, a~~
24 ~~consumer credit reporting agency shall not charge a fee for the~~
25 ~~placement of an initial security freeze, but may charge a fee not~~
26 ~~to exceed five dollars (\$5) for the removal of the freeze, the~~
27 ~~temporary lift of the freeze for a period of time, the temporary lift~~
28 ~~of the freeze for a specific party, or replacing the freeze.~~

29 ~~(n) Regardless of the existence of a security freeze, a consumer~~
30 ~~reporting agency may disclose public record information lawfully~~
31 ~~obtained by, or for, the consumer reporting agency from an open~~
32 ~~public record to the extent otherwise permitted by law. This~~
33 ~~subdivision does not prohibit a consumer reporting agency from~~
34 ~~electing to apply a valid security freeze to the entire contents of a~~
35 ~~credit report.~~

36 ~~(o) Notwithstanding any other law and irrespective of whether~~
37 ~~the security freeze was requested by a representative pursuant to~~
38 ~~subdivision (a), an individual who is under 16 years of age or an~~
39 ~~individual for whom a security freeze was requested by a~~

- 1 ~~representative who is over 16 years of age may act on behalf of~~
- 2 ~~himself or herself with respect to subdivisions (d) and (j):~~

O